

REMARKS

By this Amendment, claims 15-16, 19-20, 41, 48-49, 54, and 56 are amended. No new matter is added.

Double Patenting

Claims 1-56 are rejected on the grounds of obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Pat. No. 7,127, 833.

Applicant respectfully requests the double patenting rejection be held in abeyance until the indication of allowable subject matter in the application. At that time, a terminal disclaimer, if necessary, will be filed.

Claim Objections

Claims 11, 14, and 32 are objected to. The limitation "the first connecting band" has been amended to recite "the connecting band". Accordingly, the objections should be withdrawn.

Rejections Under 35 U.S.C. § 112

Claims 1-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Regarding Claim 1 "at point of curvature of the lower end of the upper" is recited in the specification at page 3, line 4 and "the lower end of the upper" is referred to throughout the specification. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

With regard to claims 15, 16, 19, 20, 41, 48, 49, and 54, the antecedent basis issues have been addressed. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

With regard to claim 56, "a waterproof functional layer" has been amended to recite "an additional waterproof functional layer". Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

Rejections under 35 U.S.C. 103(a)

Claims 1-9, 13-30, 35-39, 43, 45-48 and 51 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mahler (U.S. Pat. No. 5,433,021). Claims 10-12 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mahler (U.S. Pat. No. 5,433,021) in view of Keidel (U.S. Pat. No. 6,820,352). Claims 40-42 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mahler in view of Ricosta (DE 296 01 600). Claims 52 and 53 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mahler in view of Pavelescu (U.S. Pat. No. 5,943,791). Claims 54-56 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mahler in view of Haimerl (U.S. Pat. No. 5,285,546). Claims 1-9, 13-30, 35-39, 43, 45-48 and 51 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Moretti (U.S. Pat. Pub. 2002/0050537) in view of Mahler. The rejections are traversed to the extent they may apply to the presently presented claims.

Maher teaches a waterproof foot covering that is lined with a waterproof layer. It contains straps and bands embedded in the material that form the outersole. See Abstract.

Independent claim 1 of the application requires that the two longitudinal sides of the connecting band have different degrees of curvature. The Office Action acknowledges that Mahler does not teach this limitation, but it alleges it would be a matter of obviousness design choice to provide a smaller degree of curvature to one longitudinal side of the connecting band in order to eliminate any pleats within the band. Applicant respectfully traverses this assertion.

In this regard, Mahler teaches that the central region has a substantially lower material density than the upper band and the lower band and alleges that this is very advantageous and leads to less pleating or no pleating. (Col. 3, lines 53-60) Thus,

Mahler's alleged reduction in pleats is a result of lower material density and not as a result of differing degrees of curvature.

It is believed that no where does Mahler teach or suggest (or illustrate in the drawings) connecting that that having different degrees of curvature leads to less pleating or no pleating.

Thus, because Mahler purports to effectively achieve reductions in pleats by lowering material density, there would have been no motivation for Mahler to select connecting bands having differeng degrees of curvature to achieve that result.

A plurality of secondary references have been cited to reject the dependent claims. However, it is also believed that none of these references teach or suggest connecting bands having different degrees of curvature as required by independent claim 1. Thus, there relevance is unclear.

Moretti (U.S. Pat. Pub. 2002/0050537) has also been cited as a primary reference. Applicant has retrieved the cited number for the Moretti patent publication and there appears to be an error in the citation. The patent referenced is a patent to Kim to a novel apparatus of a surface mounting device. Thus, it appears that the Moretti patent may have been cited in error.

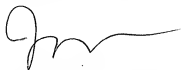
In any event, the Kim reference, like Mahler, does not teach connecting bands having different degrees of curvature as required by independent claim 1.

Accordingly, in view of the foregoing, reconsideration and withdrawal of the rejections is respectfully requested.

Conclusion

In summary, it is submitted that Applicant's claims presently in the application are patentably distinct over the prior art of record. Thus, it is submitted that the present application is in a condition for allowance and favorable action thereon is respectfully requested. The Examiner is invited to telephone the undersigned at her convenience should only minor issued remain after consideration of the present amendment to permit early resolution of the same

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'James Arnold, Jr.', with a long, sweeping horizontal line extending to the right.

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